91-1253

(1)

Supreme Court, U.S.
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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1991

DONALD LEE COOK, PETITIONER

VS.

CLARENCE D. CAIN, RESPONDENT

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Does the Fourteenth Amendment Supercedes the Eleventh Amendment?

Does the qualified immunity abridge the right of First, Fifth, Sixth, Eighth, and Ninth Amendments to the United States Constitution?

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NO. _____

IN THE SUPREME COURT

OF THE

UNITED STATES OF AMERICA

OCTOBER TERM, 1991

DONALD LEE COOK, PETITIONER

VS.

CLARENCE D. CAIN, JUDGE 75TH DISTRICT,

RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Petitioner Donald Lee Cook, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit, refusing to review any of the allegations in the Petitioners Motion for rehearing. In which, the

Petitioner alleged severe violation of his Civil Rights, which are protected through the law of the First, Fifth, Sixth, Eighth, Ninth, and Fourteenth Amendments to the Constitution of the United States, which stemmed through a cattle theft conviction.

DECISION BELOW

The decision of the United States Court of Appeals for the Fifth Circuit is not reported. A copy of the decision is attached hereto. as Appendix A. (A4). The order of the United States District Court for the Southern District of Texas is not reported, a copy is attached hereto, as Appendix C. (A.3)

JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on October 1, 1991. An order denying a Petition for rehearing was entered on October 24, 1991, and a copy of the order is attached hereto, as

Appendix B. (A.1). Jurisdiction is conferred by 28 U. S. C. 1254 (1)

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

This case involves Amendments I, V, VI, VIII, IX, and XIV to the Constitution and Laws of the United States. Made Applicable to the States by Section 1 and 5 of Amendment XIV to the Constitution.

> **SECTION 1.** All persons born or naturalized in the United States, and subject to the Jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges of immunities of Citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without Due Process of Law; nor deny to any person within its jurisdiction the Equal Protection of the Laws.
>
> **SECTION 5.** The Congress shall have power to enforce, by appropriate legislation the provision of this article.

And enforced by Title 42, Section 1983, United States Code:

> Every person who, under color of any Statute, ordinance, regulation, custom, or usage of any State of

of Territory of the District of Columbia, subjects, or causes to be subjected, any Citizen of the United States. or other person within jurisdictions thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and Laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

Petitioner was indicted for the offense of Theft of Cattle on April 15, 1978.

INDICTMENT READ AS FOLLOWED

Donald Lee Cook took twelve head of cattle without the consent of the owner, Don Childress, who lived in Mt. Belvieu, Chambers County, Texas. Petitioner was arrested on February 28, 1979 for that offense in Chambers County, Texas.

ARRAIGNMENT

On March 13, 1979 Petitioner was arraigned in the 252th District Court of Chambers County, before the Honorable Judge Doug Wood, Jr. After a pauperis affidavit was signed and the Court appointed Warren

G. Clark, Jr. to represent the Petitioner in Cause No. 3491 and the case was set for trial to be held on April 2, 1979 at 9:00 AM.

UNJUST DISCRIMINATION

The Chambers County Sheriff excorted Petitioner to the 252th District Court of Chambers County on April 17, 1979. There were eighty (80) respectable Citizens present. The Honorable Judge Clarence D. Cain stated that he was a visiting Judge, and Cause No. 3491 will be at trial on this day. That Honorable Judge red the indictment. The Petitioner pleated not guilty as charged by the indictment. Also, the Petitioner onjected in going to trial on that date, due to the fact that this date is unknown to him and his witnesses, and its also, unknown to the Court Docket Record. Petitioner Motion the Court for the right to notify his witnesses. The Court overruled that Motion for witnesses

To be notified. Appendix D (A1) is attached hereto, signed by the Respondent. Petitioner was ordered not to speak to his Attorney.

In the interest of fair Justice, Petitioner should have been protected under the Fifth Amendment to the Constitution of the United States: "No person... shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or any property, without due process of law."

Texas Constitution, Art. 1 Sec. 10: "...accused...shall not be compelled to give evidence against himself..."

Petitioner, also, objected to the trial being held on this day, due to the fact that the Counselor, who was appointed March 13, 1979, by the Court had not contacted the Petitioner regarding this case. The Respondent overruled the second objection and stated, "Here is the Court appointed Counselor Mr. Warren G. Clark, Jr. This Court will allow the Petitioner ten (10) minutes to talk with the Counselor." The Counselor,

Mr. Clark stated to let the record reflect that he is swearing under oath that this Court had not notified him of the appointment, of the case until the morning of the trial. Petitioner motioned the Court. If this Court is forcing him to go to trial on this unknown date to him and his witnesses, let the clerk of this Court enter this Motion into the record. Appendix E. (A1) attached hereto. This occurred at 9:45 AM, signed by the Clerk of the Court.

Petitioner asked the Respondent for the right to represent himself. That request was granted. The Respondent appointed Warren G. Clark, Jr. to be a Co-Counselor in this case. The Respondent also, ordered the Co-Counselor to keep his mouth shot during the proceedings of this Trial. Affidavit is attached as Appendix F. (A1) this unreasonable, arbitrary and invidious act did violate equal protection clause(s).

> Petitioner should have been protected under the Texas Constitution, Art. 1, Sec. 19: "No Citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land."

The Sixth Amendment to the Constitution of the United States guarantees the right to have the assistance of Counsel for his defense. Also, Fourteenth Amendment, Sec. 1: Also, Texas Constitution, Art. 1; Sec. 10 and Art 1.05:

> "In all criminal prosecutions, the accused shall have the right of being heard by himself, or counsel, or both."

Petitioner should have been protected under the First Amendment of the Constitution of the United States.

> "Congress shall make no law abridging the freedom of speech."

Texas Constitution, Art. 1, Sec. 8: "Every person shall be at Liberty to speak."

JURY SELECTION

At 11:00 AM, the jury selection begun, one of the members named, J. L. White informed the Respondent that he was a very close friend of the accuser. In fact he made it plain, that he and the accuser had coffee in the District Attorneys office at 7:00 AM, the same morning of the trial. The State chose Mr. White to be a member of the jury. Petitioner objected, the Respondent overruled. Mr. J. L. White's address is, Route 2, Box 198 B, Baytown, Texas. Espuivel V. State, 595 SW C27 516, 520;

Even the Petitioner is entitled to a full and fair trial on the charge preferred against him. In re Brown, 512 S. W. 2d 317 (Tex. 1974); In re Laughlin, 153 Tex. 183, 165 S. W. 2d 805 (1954); Ferguson V. Maddox, 113 Tex. 85, 263 S. W. 888 (1924); Gordon V. State, 43 Tex. 330 (1875);

Petitioner should have been protected under the Sixth Amendment to the Constitution of the United States, to have an impartial jury trial. Also, under the Texas Constitution, Art. 1, Sec. 10, should have been at trial with an impartial jury.

TRIAL TESTIMONY

Testimony begun at 1:00 PM; The Respondent read the indictment. Petitioner pleaded not guilty to the reading of the indictment. The State called its first witness, whom was the owner of the cattle in question. His testimony was, that the Petitioner gave a check for the cattle. Petitioner objected and asked the Court to dismiss the jury on the grounds that there was no check charge on the face of the indictment. In which, this was a false testimony. In Ex parte Adams, Tex. Cr. 768 SW (2) 281; In Giglio V. U. S., 150: In U. S. V. Agurs, 427 US, 97, 96 S Ct 2392, 49 L ed (2) 342 (1976);

In U. S. V. Bagley, 473 US, 667, 105 S Ct 3375, 85 L ed (2) 481 (1985); Crutcher V. State, Tx Cr, 481 SW (2) 113: In Miller V. Pate, 386 US 1, 87 S Ct 785, 17 L ed (2) 690; Mooney V. Holohan, 294 U.S. 103, 79 L ed 791, 55 S Ct 340 (1935); Giles V. Maryland, 386 US 66, 87 S Ct 793, 17 L ed (2) 737; See Us ex rel Wilson V. Warden. Ca-7, 538 F (2) 1272; Napue V. Illinois, 360 US 264, 79 S Ct 1173, 3 L ed (2) 1217; Alcorta V. Texas, 355 US 28, 78 S Ct 103, 2 L ed (2) 9; Granger, Tex Cr, 683 SW (2) 387; Trujilla, S A App. 757 (2) 169.

> "United States V Price, (1966) Some activities are so public in character that the government will not be allowed to disclaim responsibility. State inaction in the face of private actions in such areas will be deemed to establish state action." "No. Person shall be deprived of Life, Liberty, or Property without Due Process of Law."

By the Respondent neglecting his duty as required by Law, he had voluntarily violated Petitioner's Fourteenth Amendment right, in denying him the Equal Protection of the Law.

JURY VERDICT

At 4:30 PM on April 17, 1979, it took the jury less then fifteen (15) minutes to reach the verdict of guilty. Mr. J. L. White was the foreman of the jury. The Respondent dismissed that jury. The Respondent was very negligent in allowing Mr. J. L. White to be a member of the jury, after he was made fully aware that it would make the jury prejudice against the Petitioner. This certainly did violate the VIII Amendment to the Constitution of the United States, which did indeed inflict a very cruel and unusual punishment upon the Petitioner.

SENTENCING STAGE

At 5:00 PM, Respondent recalled the Court back in session for an enhancement hearing in Cause No. 10415. Respondent asked the Petitioner, "was he the same person who was convicted in Cause No. 10415 on April 30, 1973, in Liberty County." Petitioner answered, "That is true, but that case Number stemmed from a 1966 charge, which

in November of 1970, Petitioner received a five (5) year probation, and that probation was revoked on April 30, 1973. An appeal was made and as of this date, there has never been a final conviction." The Respondent stated that the jury had found the Petitioner guilty in Cause No. 3491 and this Court Sentenced the Petitioner to serve a term in not less then two and no more then twenty (20) years at Texas Department of Correction. At this point the Respondent was negligent in not appointing a Counselor to be present at this hearing.

Right of counsel to deliver summation in a non-jury case: Denial is fatal denial of Counsel. Herring V. New York, 422 US 853, 45 L ed (2) 593, 95 S Ct; Gerdes V. U. S., 425 IS 80, 47 L ed (2) 592, 95 S Ct; Callis V. State, Hou-1 App, 756 SW (2) 826. Petitioner should have been protected under the Due Process and Equal Protection Clause (s) through the Fifth, Sixth, Eighth, Ninth, and Fourteenth Amendment to the

Constitution of the United States. Appendix G. is attached hereto, to show without a doubt, which is a nine page pre-trial statement of fact signed by the Court reporter himself, that there was no Counselor appointed at this hearing and no jury was waived by the Petitioner. (A9); Argersinger V Hamlin, 407 US 25, 32 L ed (2) 530, 92 S Ct 2006; Harvey V Mississippe, CA-5, 340 F (2) 263; Braden V State, 395 SW (2) 45.

INDIGENT'S NOTICE OF APPEAL

At 5:30 PM, Petitioner gave his notice of appeal and signed into the Court Docket record that Petitioner will appeal his conviction as a poor person. The Respondent fully agreed, and ordered the County to pay all cost for a complete transcript, a full copy of the statement of facts, and Court reporters notes, and that a full copy would be made available to the Petitioner, without any cost to him. The Sheriff then took the Petitioner back to his jail cell; Appendix H (A1) is attached hereto. All

had occurred in the presence of eighty (80) witnesses.

TEXAS DEPARTMENT OF CORRECTION

On April 18, 1979, the Sheriff of the County transported the Petitioner into the full custody of Texas Department of Correction at 9:00 AM. The record will reflect that the Texas Department of Correction had full custody to the petitioner on that date and at that time.

ARGUMENT IN SUPPORT OF GRANTING CERTIORARI

A. CONFLICTS WITH DECISIONS OF THIS COURT

This case is important for the issues it raises as to the proper allocation of functions between the Federal District Courts and Federal Court of Appeals. This Court has consistently recognized that "the proper observance of the division of functions between Federal District Court and the Federal Appellate Court is important in every case," especially in cases where the District Court has been asked to issue an effective remedy to cure unconstitutional acts.

COURTS CERTIFIED DOCUMENTS

May it please this great Honorable Supreme Court of the United States; Petitioner will present **CERTIFIED COURT'S DOCUMENTS**, which will proof why this Writ of Certiorari should be granted.

In July 1979 Petitioner lettered the Respondent, herein, "An indigent defendant is entitled to free record when taking an appeal of right." Eakridge V. Board of Prison Terms & Paroles, 357 U. S. 214 (1958); Griffin V. Illinois, 351 U. S. 12 (1956); Petitioner's letter to the Clerk, filed May ·, 1979, was adequate to point out to the Court that Petitioner was indigent and was requesting a free transcription of the Court Reporters notes, Exhibit B. It was a violation of Due Process for the Court to have failed to order the Statement of Facts prepared; ID" The Respondent refused to answer this letter. The Petitioner knew that the Fifth Amendment to the Constitution of the United States gave him the

right to protect his rights and liberty under the Due Process Clause (s); Appendix I (A1) is attached hereto.

CIVIL ACTION NO. G-79-204

The Petitioner filed a § 1983 action into the Southern District of Texas, Galveston Division against the Respondent, herein, September 1979, Cause No. G-79-204. The great Honorable Federal Judge Ross N. Sterling ordered the Respondent, herein, to show cause. The Respondent answered, by saying that he would see that the Petitioner would get a complete transcription of Cause No. 3491. The Honorable Federal Judge Sterling dismissed the action without prejudice. Appendix J (A1) is attached hereto; Soon after the, Honorable Federal Judge got ill and passed away, but his signature is very much alive.

November 8, 1979, the convicting Court sent Petitioner a letter stating that a complete transcription has been forwarded.

But, there was no statement of facts or Court reporters notes included in this transcription. **(PETITIONER NEVER DID RECEIVE A COMPLETE TRANSCRIPTION FROM THE CONVICTING COURT, THEREFORE, PETITIONER WAS NOT ABLE TO FILE A FAIR APPEAL.)** Appendix K (A1) is attached hereto.

MOTION FOR EXTENSION OF TIME

November 12, 1979, Petitioner asked the Court of Appeals for extension of time, because the Trial Court had withheld the Statement of Facts and the Court Reporters Notes from the transcription. Petitioner asked for a thirty day extension. On May 13, 1980 that request was denied, Appendix L (A1) is attached hereto.

TEXAS COURT OF CRIMINAL APPEALS OPINION

July 16, 1980, witnessed by the Honorable Judge John F. Onion, at the Texas Court of Criminal Appeals; read the opinion as follows:

"The record is before us without a transcription of the Court Reporter's notes or bills

of exception. No brief was filed in the Trial Court in Appellant's behalf pursuant to Art. 40.09, Sec. 9, V. A. C. C. P. The record reflects the Appellant has acted as his own Counsel throughout the trial and appeal of the case. Further, it does not appear that the Appellant made a timely request for a transcription of the Court Reporter's notes or filed pauper's oath. Nothing has been found which would require our review under Art. 40.09, Sec. 13, V. A. C. C. P.; Appendix M (A1) is attached hereto.

STATE WRIT OF HABEAS CORPUS ART. 1107, V. A. C. C. P.

August 1980, Petitioner filed a State Writ of Habeas Corpus Art. 1107, V. A. C. C. P. On the grounds of the Laws as follows:

A. Petitioner was denied assistance of any attorney;

B. Petitioner was denied a fair trial, due to a prejudice jury;

C. Petitioner was tried under false indictment;

D. Petitioner was denied a jury during the sentencing stage;

E. Petitioner was denied an attorney to be present at the sentencing stage;

F. Petitioner was denied his privilege to file a true and correct appeal from his 1979 conviction;

The State Writ showed the violations to the Texas Constitution, Art. 1, Sec. 10 and 105, Art. 1, Sec. 19, and 1.04; Art. 1, Sec. 8, and Art. 1, Sec. 5; Art. 1, Sec. 3;

The Respondent refused to rule on that Writ. In November 1998, Petitioner lettered the Respondent, asking him to rule upon the Writ. January 1981, Petitioner believed that he did have a Fifth Amendment right through the Due Process Clause (s) to protect his right and liberty.

FEDERAL WRIT OF HABEAS CORPUS, CIVIL ACTION NO. H-81-232

On January 1981, Petitioner filed his Federal Writ of Habeas Corpus pursuant to 28 U. S. C. § 2254, Civil Action No. H-81-232.

April 1981, the United States Magistrate Mr. Calvin Botley, Made the Respondent fully aware that the Federal Habeas Corpus had good standards and a show Cause Order was entered.

On April 29, 1981 the Respondent ruled on the State Habeas Corpus and denied the Writ. (This Writ was filed August 1980.) The Respondent ordered the Clerk of the Court to sent a copy of this Habeas Corpus to the Texas Court of Criminal Appeals. On April 30, 1981 the Clerk did sent a copy of the Texas Writ of Habeas Corpus to the Texas Court of Criminal Appeals. The Court of Criminal Appeals entered the State Writ under Cause No. 9252 A. Appendix N (A1) is attached hereto.

THE STATES MOTION TO THE FEDERAL WRIT OF HABEAS CORPUS

The Assistant Attorney General, Leslie a Benitez informed the Federal Court that the Federal Writ of Habeas Corpus, Civil Action No. H-81-232, must be dismissed

for failure of exhausting State remedies. The Federal Court was informed that the 11.07 of Texas Code of Criminal Procedures in Writ No. 9252 A. was in the Texas Court of Criminal Appeals and that Court had not ruled upon that Writ, and that, that Writ has the same allegation as the Federal Writ.

THE UNITED STATES MAGISTRATE OPINION

Similarily, a cursory examination of the application reveals that these issues have not been exhausted before the State Courts of Texas. Petitioner currently has a pending application under review pursuant to Art. 11.07, Texas Code of Criminal Procedure, in Writ No. 9252 in the Court of Criminal Appeals of Texas. Further, the Court of Criminal Appeals of Texas has made it clear that the State Trial Court should not and, that it will not consider a Petitioner's application for post-conviction Writ of Habeas Corpus while the Federal Courts retain jurisdiction of the same matter.

It is therefore recommended that this Habeas Corpus Action be Summarily Dismissed without prejudice pursuant to Rule 4, 28 fol. § 2254, subject to being refiled after exhaustion of state remedies as to all claims. Signed by the United States Magistrate July 7, 1981, and affirmed as final judgment, signed by a United States District Judge Gabrial K. McDonald, on August 24, 1981. Appendix O (A4) is attached hereto.

HEARING OF STATE WRIT OF HABEAS CORPUS

On September 23, 1981, in the Texas Court of Criminal Appeals, Writ No. 9252 A. was heard before that Court. The Assistant Attorney General, Leslie a Benitz informed the Court as follows:

"it has come to this Courts attention that the Petitioner has presently pending in the United States District Court, for the Southern District of Texas, Houston Division, an action, Styled Donald Lee Cook Vs W. J. Estelle, Jr., Director of Texas Department of Correction, Civil Action No. H-81-232, relating to the same issues presented in the instant application for Habeas Corpus relief."

This Court has repeatedly held that when a Federal Court assumes Jurisdiction, this will dismiss the application for Habeas Corpus relief. Petitioner's application for habeas corpus relief is therefore dismissed.

It is so ordered this 23rd day of September, 1981; Witnessed by the Honorable Judge, John F. Onion, Jr.

Appendix P (A1) is attached hereto.

October 1981, the Petitioner filed the same State Writ back into the Convicting Court with an attached Motion, stating that this Writ was before the Texas Court

of Criminal Appeals and that, that Court refused to rule upon this Writ, because the same allegation was in a Federal Court, under Docket No. H-81-232, and proof is attached, signed by U. S. District Judge, in which, the Federal Writ was dismissed, the 24th day of August 1981.

The Texas Court of Criminal Appeals did not hear this writ until September 23, 1981. So there should not be any reason why this Writ should not be heard as prescribed by law. In November 1981, the Respondent, herein, denied that Writ and Motioned the Texas Court of Criminal Appeals to enter Abuse of Writ against the Petitioner. December 1981 the Texas Court of Criminal Appeals dismissed that Writ, without a written opinion. (It is a matter of public record:.

DUE PROCESS

Petitioner was entitled to protect his RIGHTS AND LIBERTY THROUGH THE FIFTH AMENDMENT,

UNDER THE DUE PROCESS CLAUSE (S). Petitioner challenged his 1979 State Conviction on the grounds that he did have a FIRST AMENDMENT RIGHT UNDER THE DUE PROCESS CLAUSE (S). HE CLAIMED VIOLATION OF PROCEDURAL DUE PROCESS AND A FIRST AMENDMENT RIGHT TO TO SPEAK INTO FEDERAL COURT. (England V. Louisiana State Board of Examiners, 375 U. S. 411 (1964)

In January 1982, the United States Magistrate, Mr. H. Lingo Platter ordered a show cause. June 16,1982, the Assistant Attorney General Leslie A. Benitz asked for extension of time. No objection by the Petitioner was filed.

August 2, 1982, Respondent Motioned to Dismiss and Answer. Respondent stated as follows:

Respondent has full custody of the Petitioner by virtue of the judgment and the sentence of the 75th Judicial District Court of Chambers County, Texas.

(Petitioners objections were, that the judgment should have been a reversible

error in that it states as follows:)

It is therefore, considered, ordered adjudged by the Court that the Defendant Donald Lee Cook is guilty of the felony offense of cattle theft as found by the jury, that said offense occurred on April 15, A.D. 1978, and that he was one of the same persons that was convicted on the 30th day of April 1978 in Cause No. 10-415, under the name Frank Cook in the 75th Judicial District Court, of a felony, to-wit: cattle theft and this conviction was for an offense committed by him.

Petitioner objected on the grounds that before a conviction can be used for an enhancement, one or the other must become final. ONE OFFENSE STATES APRIL 15, 1978, THE OTHER STATES APRIL 30, 1978. (these dates were error)

The Petitioner's second objection was, that 75th District Court did not have Jurisdiction in Chambers County. The 75th Judicial District Court is in Liberty County and not in Chambers County.

Petitioner's third objection was, that the Respondent stated that the Petitioner was indicted on March 16, 1979 in Chambers County.

THAT WAS A FALSE STATEMENT. PETITIONER WAS INDICTED IN DECEMBER 1978.

Petitioner's fourth and final objection was to the Respondent statement as follows:

> Finally, Petitioner contends that he was denied a fair appeal, presumably because no statement of facts of his trial was prepared. The record reflects, however, that no pauper's affidavit was ever filed in this case, and that no request was ever made by the Petitioner for a statement of facts of the trial to be prepared.
>
> There is absolutely nothing in the record to indicate that Petitioner was indigent, that he could not afford to pay for a statement of facts, or that he even desired one. Thus, the state records, belie Petitioner's self-serving assertions that he informed all officials that he was indigent or that he desired a full statement of facts on appeal.

The Petitioner showed a letter signed by the Respondent, herein, dated March 22, 1979, that proofed that the Petitioner was indigent and could not hire an attorney, and that a state District Judge, H. Doug Woods of the 252th District Court of Chambers County did indeed appoint Warren G. Clark, Jr. to represent the Petitioner in Cause No. 3491.

The Respondent's Attorney, Assistant Attorney General Leslie A. Benitez knew without a doubt that the entire three page Motion was completely untrue.

Civil Action No. G-82-7 was originally filed in Galveston Division, but due to the shortage of Federal Judges in Galveston Division, some of the Civil Action documents were sent to Houston Division, and some were sent to Ft Worth Federal Warehouse in Fort Worth, Texas.

In August of 1985, Civil Action No. G-82-7 was heard before the United States District Judge Hugh Gibson, for the Southern District of Texas, Houston Division. The Respondent Motion to Dismiss was present, but the Petitioner's Motion of Objection was not present, and the Honorable Federal Judge dismissed Civil Action No. G-82-7 August 1985. (Appendix Q (A1) is attached hereto)

In November 1985 Petitioner filed for a rehearing. In September 1987 the rehearing was denied with out a written opinion.

GRIFFIN V. BRECKENRIDGE
SUPREME COURT OF THE UNITED STATES, 1971
403 U. S. 88

"If two or more persons in any State or territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or equal privileges and immunities under the laws, [and] in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object or such conspiracy, whereby another is injured or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury of deprivation, against any one or more of the conspirators."

CONSTITUTION IS A LIVING WORD

"In the end, the typology of arguments offered in Constitutional Fate reveals a steady movement away from the Constitution toward rather unfettered judicial opinion. From the Historical to the Textual to the Doctrinal to the Structural to the Prudential, the Constitution fades in significance. Thus the logical next step: The Ethical Argument. The object of this line of argument is simple: it is an effort to "help justify particularly difficult and otherwise troublesome decisions," decisions that without recourse to the Ethical Argument are simply "incomprehensible."

"Thus, the textual provision of Eighth Amendment which forbids cruel and unusual punishment is evidence of a more general constitutional ethos, one principle of which is that government must not physically degrade the persons for whose benefit it is created. The object of the Ethical

Argument is, simply, to create new "nontextual" rights."

CIVIL ACTION NO. G-90-170

The Petitioner should be entitled for a Writ of Certiorari to be granted, due to the Federal Courts Opinion in Appendix C. The Assistant Attorney General of the State of Texas, Harry G. Potter, III, voluntarily, intentionally, and maliciously presented perjured information into the Federal Court, "by stating that the Plaintiff had waited some more then eleven (11) years before instituting his Complaint." This Perjured information was presented into the Federal Court twice; first one was July 3, 1990 and the second one was August 10, 1990. In which, the Respondent was fully aware of the 1979 Civil Action Violation filed against him and two (2) different Federal Writ of Habeas Corpus were filed and brought to his attention, and three different Motions signed by three different Federal Judges.

The Federal Court had punished the Petitioner by not reviewing the three separate Federal Judges ORDERS , before the Court reached its opinion to dismiss the Civil Right Action.

QUESTION OF JUDICIAL QUALIFIED IMMUNITY

(1) The Fourteenth Amendment imposes substantial limitation on State authority to interfere with the rights of private individuals.

(2) The simplest answer to this dilemma is to conclude that, because of its later passage and its significant alteration of concept of federalism, the Fourteenth Amendment supersedes the Eleventh Amendment.

(3) In fact, the Supreme Court has at least to a certain extent, reached that conclusion, in Fitzpatrick V. Bitzer, 427 U.S. 445 (1976).

A.

Through the Court Docket proof herein, there should be no doubt that the Respondent, herein, violated the Statute in not giving the Petitioner the right to notify his witnesses.

B.

It is a fact that the Respondent knew that the jury was prejudice, but the Respondent insisted on keeping this prejudice jury in session.

C.

Respondent knew that the indictment did not show a check charge on it, and after the check was shown to the jury he refused to correct it and he gave a twenty (20) year sentence for the indictment.

D.

The Respondent knew that sentencing the Petitioner without the presence of the jury and Attorney was a violation of the law.

E.

The Respondent knew that he did violate the law in ordering the sheriff to take the Petitioner to prison one day after sentencing.

F.

The Respondent knew, that by withholding a Texas Writ of Habeas Corpus nine full months before ruling upon the writ and

ordering the Clerk to send it to its proper location was a violation of the law.

The Fifth Circuit Court have overlooked the violations of the Constitutional Rights and Laws that were committed by the Respondent, herein.

If it may be fair to say; THIS GREAT HONORABLE SUPREME COURT should take the opportunity to clarify its holding in Fitzpatrick V. Bitzer, (1976); ExPorte Young, (1908); Scherer V. Rhodes, 416 U. S. 232 (1974).

CONCLUSION

For the reasons set forth above, a Writ of Certiorari should issue to review the judgment and opinion of the Court of Appeals in this Matter.

Dated 12-31-1991 Respectfully Submitted,

Donald Lee Cook

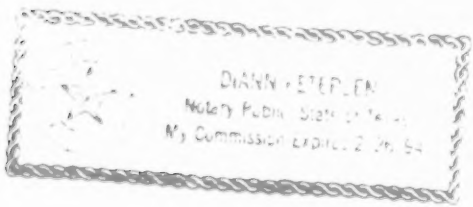
Donald Lee Cook, Pro SE
P. O. Box 2243
Humble, Texas 77347
(713) 358-6104

If this Court elects not to address the issues presented in this writ at the present time, it is requested that the Writ issue and that the matter be remanded to the Court of Appeals for redetermination in light of this Court's opinions, in the interest of justice.

I, Donald Lee Cook, BEING FIRST DULY SWORN, UNDER OATH SAYS: THAT HE IS THE PETITIONER IN THIS ACTION AND KNOWS THE CONTENT OF THE ABOVE PETITION FOR WRIT OF CERTIORARI, THAT IT IS TRUE, AND AS TO THOSE MATTERS HE BELIEVES THEM TO BE TRUE AND CORRECT, SO HELP ME GOD.

Donald Lee Cook
SIGNATURE OF PETITIONER

[illegible] 12 30 91
SIGNATURE OF NORARY PUBLIC



IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 91-2003
SUMMARY CALENDAR

DONALD LEE COOK,

PLAINTIFF/APPELLANT

VERSUS

CLARENCE D. CAIN,

DEFENDANT/APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
(G-90-170)

OCTOBER 1, 1991

Before GARWOOD, HIGGINBOTHAM and BARKSDALE, Circuit Judges. 1 PER CURIAM:

Plaintiff-Appellant Donald Cook (Cook) appeals the dismissal of his suit for damages against Defendant-Appellee Clarence Cain (Judge Cain), the Texas District Judge who presided over Cook's 1979 state trial which resulted in his conviction for cattle theft. We affirm.

Appendix (A)

---

1 Local Rule 47.5 provides: ("The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

Proceeding pro se, Cook filed this suit in June 1990 on a form designed for Civil Rights Actions under 42 U. S. C. § 1983. Cook alleged that, in 1979, he was convicted in a Texas Court for theft of Cattle. He claims that rulings made in that 1979 trial Judge Cain, who presided over it, violated Cook's Federal Constitutional Rights. Cook's complaint seeks $5,000,000.00 damages from Judge Cain.

Judge Cain, the sole Defendant named by Cook, filed in July 1990 a Motion to dismiss based on, inter alia, judicial immunity and limitations. The District Court in December 1990 granted the motion and dismissed the Civil Rights aspects of the action with prejudice. Cook filed a timely notice of appeal.

Granting a motion to dismiss is inappropriate if, under the complaint, the universe of theoretically provable facts supports a cause of action. Moawad V. Childs, 673 F.2d 850, 851 (5th Cir. 1982). Cook has not shown that the district court committed reversible error because he has not shown that the universe of theoretically provable facts supports any of his causes of action.

Under ordinary circumstances, if decision of a claim may "automatically entitle" the claimant to immediate or earlier release, then it must be pursued initially through habeas corpus, including its requirement of exhaustion of available state remedies. The exhaustion requirement reflects federal-state comity concerns. Serio V. Members of Louisiana State Board of Pardons, 821 F.2d 1112, 1117-19 (5th Cir. 1987).

The District Court relied, in part, on Cook's failure to exhaust state habeas remedies. Cook's brief to this Court, liberally construed, argues that he met that requirement. That

issue is, however, irrelevant. The District Court did not err by dismissing the present section 1983 action with prejudice, regardless of whether habeas remedies have been exhausted, because federal-state comity concerns are not implicated; the dismissal was properly based on judicial immunity, which does not involve the merits of claims that could undermine the validity of the conviction. See Serio, 821 F.2d at 1115.

In his brief to this Court, Cook challenges various rulings made by Judge Cain in his judicial capacity. Cain is absolutely immune from a suit for damages under 42 U.S.C. § 1983 for any such conduct. See Brewer v. Blackwell, 692 F.2d 387, 396 (5th Cir. 1982). None of the claims that Cook raised to this Court implicates Judge Cain's conduct outside his judicial capacity. The District Court did not commit reversible error in granting the motion to dismiss for failure to state a claim upon which relief may be granted.

Cook argues that the District Court erred by failing to conduct an evidentiary hearing. This argument lacks merit; no hearing was necessary because Cook's complaint did not state a colorable claim. See Foulds v Corley, 833 F.2d 52, 53-55 (5th Cir. 1987). Cook also contends that the District Court ingnored his "Motion of Proof." Any such error is harmless because the motion could not change the result of Cook's action. See Fed. R. Civ. P. 62.

The District Court's judgment is accordingly

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 91-2003

DONALD LEE COOK,	§	U.S. COURT OF APPEALS
PLAINTIFF/APPELLANT	§	FILED
	§	OCTOBER 24, 1991
VERSUS	§	GILBERT F. GANUCHEAU
	§	CLERK
CLARENCE D. CAIN,	§	
DEFENDANT/APPELLEE	§	

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

ON PETITION FOR REHEARING

(OCTOBER 24, 1991)

Before GARWOOD, HIGGINBOTHAM AND BARKSDALE, Circuit Judges. PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby DENIED

ENTERED FOR THE COURT:

SIGNED BY Garwood

UNITED STATES CIRCUIT JUDGE

APPENDIX (B)

IN UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

DONALD LEE COOK,	§	ENTEREL
PLAINTIFF	§	DECEMBER 14, 1990
	§	JESSE E. CLARK, CLERK
VERSUS	§	BY DEPUTY M. B.
	§	
CLARENCE CAIN,	§	CIVIL ACTION NO.
JUDGE 75TH DISTRICT	§	G-90-170
DEFENDANT	§	

FINAL JUDGMENT

On this date, came on to be heard Defendant"s Motion to Dismiss, pursuant to Rule 12 (b) (6) of the Rules of Civil Procedure, and the Court is of the opinion that the Motion is in order, and should be GRANTED, for the following reasons.

On June 20, 1990, this suit was instituted by Plaintiff, Pursuant to 42 U. S. C. § 1983. Plaintiff essentially alleges, in his Original Complaint, that he did not receive a fair criminal trial from Defendant, who was the presiding judge in Cause. No. 3941, styled "The State of Texas Vs. Donald Lee Cook", which was tried in the 75th Judicial District Court of Chambers County, Texas, in April, 1979. Plaintiff alleges that

the trial judge (Defendant) abused his discretion in refusing to allow the testimony of three witnesses[2], which Plaintiff asserts would have vindicated him. In the absence of the testimony of such witnesses, Plaintiff alleges that he was indeed convicted, and was sentenced to twenty (20) years in the Texas Department of Corrections. Plaintiff also, alleges that he was not provided adequate counsel, or an adequate ability to appeal, and he urges a number of other objective and subjective complaints.

---

1 More then eleven years preceding institution of the instant action.

2 No showing is made in the pleadings as to why such ruling constitutes an abuse of discretion, and no portion of the record of Plaintiff's 1979 conviction has been herein submitted for review.

Pursuant to timely service, Defendant filed on July 11, 1990, a Motion to Dismiss, which is now before the Court. The Court expressly notes that Plaintiff Appears genuinely upset

about his present circumstances, and particularly the stigma he feels he will suffer "every day", as a result of the burden of this conviction. Unfortunately, while the Court sincerely sympathizes with Plaintiff's discomfort, Plaintiff does not state a viable cause of action, upon which this Court can grant relief, as a matter of law.

Essentially, Plaintiff asserts three theoretical grounds upon which he might proceed. First, he complains of an unfair trial at the Court level, which he asserts resulted in an improper conviction. Unfortunately, the Texas Rules of Procedure provide comprehensive remedies in this regard, and this Court is not empowered to impose its own remedies upon the Texas State Judicial System, absent a clear showing of exhaustion of Plaintiff's state remedies, and a violation of an appropriate statutory enactment. Any appellate relief Plaintiff had available to him, as regards his State Court conviction, has long since been waived, and this Court has

no standing to now review such, in the circumstances of the instant case. In the alternative, Plaintiff asserts, as a second theory, violation of 42 U.S.C. § 1983 and numerous Amendments to the United States Constitution. However, the Court finds these vague contentions without merit.

Of critical significance, this Court finds that even assuming Plaintiff had a viable § 1983 claim, (which does not appear to be the case), such accrued as of the time of his conviction, in April, 1979. Inasmuch a Plaintiff elected to wait more then eleven years, until June, 1990, to assert the instant cause of action, any claim he alleges, is absolutely time-barred. Tex. Civ. Prac. & Rem. Code § 16.003, Wilson vs. Garcia, 471 U.S. 270 (1985), Helton vs. Clements, 832 F. 332 (5th Cir. 1987). Moreover, even assuming that the case was not time-barred, it is absolutely clear that the Defendant, Judge Cain, has absolute Judicial Immunity, in the circumstances of the instant case.

Stump vs. Sparkman, 435 U.S. 349 (1978), Pierson vs. Ray, 386 U.S. 547 (1967) See also, Slavin vs. Curry, 547 F.2d 1256 (5th Cir. 1978), Adams vs. McIlahany, 574 F.2d 294 (5th Cir. 1985).

Thisr, and finally, the Court considers the theoretical possibility that Plaintiff intended to herein assert an application for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254. However, in that regard, it is noted that even were the Court to construe Plaintiff's pleadings as applying for such a writ, such application is fatally defective on its face, for failing to meet the threshold test set out in 28 U.S.C. § 2254 (a), even assuming that the procedural rules applying to such a application had been fulfilled, which indeed is not the case. Moreover, such an action would not give rise to any liability on the part of Defendant, as a matter of law.

In the Circumstances, it is the finding

of this Court that Plaintiff's Complaint herein filed fails to state a cause of action against Defendant for which this Court can grant relief, as a matter of law, and it is accordingly;

ORDERED, ADJUDGED and DECREED that this cause is hereby DISMISSED WITH PREJUDICE, pursuant to Rules 12 (b) (6) and 56 (b), of the Federal Rules of Civil Procedure. It is further

ORDERED, that all other Motions herein pending are rendered moot by the foregoing, and are therefore not reached. The Court notes its concern that Plaintiff's claim approaches a violation of Rule 11, of the Federal Rules of Civil Procedure, but given Plaintiff's pro se status, the Court refrains from consideration of this issue, at the present time.

COSTS HEREIN TO DATA ARE ADJUDGED AGAINST PLAINTIFF.

DONE at Galveston, Texas, this, the 13th day of December, 1990.

SIGNED BY MANUEL B. HOYT
U. S. District Judge

April 5, 1979

State of Texas	§	IN THE DISTRICT COURT
	§	OF CHAMBERS COUNTY,
VS	§	TEXAS
	§	
DONALD LEE COOK	§	

DISTRICT ATTORNEY & JUDGE CAIN

Notice to the District Clerk of Chambers County, Texas.

WITNESSES FOR THE DEFENSE TO HELP PROVE HIS INNOCENCE:

(1) Mr. Don Childers, Mont Belvieu,

(2) Mr. Don Childer's records of Income Tax from 1975, 1976, 1977, 1978. These records will also have a part in proving the defendants innocent of this charge. These copies will go to Judge Cain, a Copy to the District Clerk, and a copy to the District Attorney of Chambers County, the Defendant also. The District Clerk to show copies of the subpoena to the Defendant, Donald Lee Cook.. The Defendant hopes this will be satisfactory with the District Clerks office. This letter will be given to the jailer for delivery into the proper place.

APPENDIX D.

(3) Witness Number three, Judge Woods of Chambers County, Texas.

(4) Witnesses number three, Texas Ranger Kelley White-and Doctor Ivory.

These witnesses were overruled by Judge Clarence D Cain, and it was signed by Clarence D. Cain, the trial Judge.

FILED
the 17, day of April
A. D. 1979 at 9:45 AM
R. B. Scherer, Jr.
District Clerk
Chamber County, Texas

IN THE DISTRICT COURT
OF CHAMBERS COUNTY, TEXAS

APRIL 17, 1979

State of Texas

VS

Donald Lee Cook

Before this Court in the presence of Warren G. Clark and in the presence of 80 Citizens you as a District Judge is telling me that I am forced to go to trial on this Date, April 17, 1979, it is unknown to the Court Records.

I am asking the Clerk to date this letter

FILED

the 17 day of april
A.D. 1979 at 9:45 A.M.
R. B. Scherer, Jr.
District Clerk
Chambers County, Texas
Signed by the District Clerk

APPENDIX E.

AFFIDAVIT

My name is Warren G. Clark, Jr. On April 17, 1979 in Trial Docket Number 3491, in Chambers County, at Anahuac, Texas, at 9:30 A.M., the Trial Judge Clarence D. Cain, appointed me to be a Co.Counselor and appointed Donald Lee Cook to be the head Counselor, in the Presence of eighty respectable Citizens. The Trial Court ordered me to keep my mouth shot throughout the proceeding of this trial and also, ordered me not to assist Cook with any information throughout the proceeding of this trial.

If I am requested to appear, I will answer that this information to be true and correct. My phone number is Area Code 409-267-3161. I have given Cook permission to present this information into the Court.

_____

Donald Lee Cook
(718) 358-6104)

NO. 3491

THE STATE OF TEXAS	§	IN THE DISTRICT COURT OF CHAMBERS
VS	§	COUNTY, TEXAS 75TH JUDICIAL DISTRICT
DONALD LEE COOK	§	

PARTIAL STATEMENT OF FACTS

APPEARANCES:

CARROLL E. WILBORN
DISTRICT ATTORNEY
P. O. BOX 490
ANAHUAC, TEXAS 77514

DONALD LEE COOK
PRO SE

On the 17th day of April, 1979, the above entitled and numbered cause came on for trial before the Honorable Clarence D. Cain, Judge of the 75th Judicial District Court of Texas, and the following excerpt from that proceeding is herein transcribed, viz:

* * *

THE COURT: The court having heard the evidence on the question of punishment hereby finds your punishment at confinement in the Texas Department of Corrections for a period of twenty years and that the State of Texas do have and recover of you, the defendant, all costs in this proceeding incurred for which execution will issue

and you are remanded to jail until the Sheriff can carry out your sentence.

Now, you have ten days in which to accept sentence or you may waive that ten days and accept sentence now.

What do you wish?

THE DEFENDANT: I wish to accept sentence now.

THE COURT: Do you waive the ten days?

THE DEFENDANT: Yes

THE COURT: Do you want to confer with your attorney about that?

MR. WILBORN: I will get a written waiver, your Honor.

(WHEREUPON a short recess was had, after which the following proceedings were had:)

THE COURT: Will the defendant please rise.

Do you have anything to say why sentence should not be pronounced against you at this time?

THE DEFENDANT: No, sir.

THE COURT: You having waived the time

allowed before sentencing and -- That is, the ten days. And you having nothing to say why sentence should not be pronounced against you at this time, the Court will now pronounce sentence, that on the 17th day of April, 1979, in cause number 3491, State of Texas vs. Donald Lee Cook in the District Court of Chambers County, Texas, 75th Judicial District, wherein the State appeared by her District Attorney and County Attorney and you, Donald Lee Cook, appeared Pro Se, and you having been found guilty by a jury composed of J. L. White and eleven others and having been adjudged guilty by the Court and your punishment having been assessed at twenty years confinement in the Texas Department of Corrections is is -- YOU HAVING BEEN adjudged to be guilty of that enhancement count by the court on the punishment phase which was in cause number 10,415 in the 75th Judicial District Court of Liberty County of the felony offense of cattle theft. And it is the order of

this Court that you be delivered by the Sheriff of Chambers County to the Director of the Department of Corrections of the State of Texas or to any other person legally authorized to receive such convicts where you shall be confined in the said Department of Corrections for a term of years not less then two years nor more then twenty years in accordance with the laws governing the Texas Department of Corrections. You are remanded to jail until the Sheriff can obey and carry out the instructions of this sentence.

Further, in Cause number -- After you have served the sentence in cause number 3491 in the District Court of Chambers County, the State of Texas vs. Donald Lee Cook, in which you've just been sentenced -- The sentence that I've just pronounced will begin to run after you have served the sentence in the cause of the State of Texas vs. Donald Cook, number 15,732 in the 2th District Court of Milam County, Texas, in which you were sentenced in that court for the felony offense of theft by check of property.

When that sentence becomes a final sentence -- I understand that that is on appeal now; is that correct?

THE DEFENDANT: Yes, sir.

THE COURT: But this sentence that I have just pronounced -- In other words, I'm stacking it on top of the five year sentence, so you will be doing twenty-five years in the penitentiary.

THE DEFENDANT: Yes, sir.

THE COURT: You have ten days in which to file your notice of appeal --

THE DEFENDANT: Well, I will appeal this case. I will put it in open court right now.

MR. WILBORN: Your Honor, could the Court make an inquiry as to whether or not he feels that he can represent himself on appeal or --

THE COURT: That occurred to the Court.. You have come into the court now and represented yourself pro se. You have not in any way indicated that you were indigent or to poor to employ counsel, but counsel was available

to you and counsel has been standing by you with no obligation other than to answer any questions that you might ask him.

Are you satisfied with his representation?

THE DEFENDANT: Yes, sir, I'm as satisfied as I can be.

THE COURT: Do you have sufficient funds with which to employ an attorney to appeal this case?

THE DEFENDANT: I believe that I'm capable enough to handle this appeal myself.

THE COURT: If you feel that you want to handle it pro se, well, you may do that.

MR. WILBORN: Out of an abundance of precaution could you appoint Mr. Clark again to stand by --

THE COURT: I will appoint Mr. Clark again to -- He has no responsibility in your appeal other that to answer your questions.

You will be in Huntsville --

Mr. Wilborn: Mr. Clark could advise him concerning the technicalities before he leaves.

THE COURT: Do you still wish and desire to represent yourself pro se?

THE DEFENDANT: Yes, sir, Thank you, sir.

MR. WILBORN: So long, Mr. Cook. You understand again the advantages and disadvantages --

THE COURT: I want you to understand again, Mr. Cook -- I think I've reiterated this thing about three times that these lawyers go to school about seven years to obtain a degree and they practice -- How long have you been practicing, Mr. Clark?

MR CLARK: I'm starting my twelfth year.

THE COURT: He's been practicing for twelve years. Some of the lawyers have been practicing for forty years.

So, you see, it's an ever changing thing. Law is probably one of the most technical professions there is.

I certainly could not advise you too strongly to have an attorney to represent you on appeal, but if you want to represent

yourself you have that right.

THE DEFENDANT: I sure thank you, sir.

THE COURT: Do you still wish to represent yourself?

THE DEFENDANT: I sure do.

THE COURT: Are you still of sound mind and know what you are doing?

THE DEFENDANT: I sure hope so.

* * * *

THE STATE OF TEXAS §

I, Wong C. Lee, Official Court Reporter in and for the 75th Judicial District Court of Texas, do hereby certify that the foregoing contains a true and correct partial transcription of the proceedings in the foregoing styled and numbered cause, all of which occurred in open court and were reported by me.

Witness my had this the 3rd day of September, 1982 A.D.

Signed by Wong C. Lee
Official Court Reporter
75th Judicial District
Court of Texas

IN THE DISTRICT COURT
OF CHAMBERS COUNTY, TEXAS

APRIL 17, 1979

State of Texas

VS

Donald Lee Cook

To the District Court of Chambers County, Texas, I am asking it to bring this case to Justice so Defendant Donald Lee Cook can prove his innocence in a Court of Justice. But the 75th District Court of Chambers County, has not still showed compassion toward the Defendant, Donald Lee Cook in this case.

The 75th District Court is only using the Defendant Donald Lee Cook to tob the Tax payers. Can the Defendant, Donald Lee Cook have the right to ask the Federal Court to act in this case.

The said Defendant, Donald Lee Cook is to Poor to make such a high Bond, that has kept _____to hire an attorney to help represent him in this case

An answer would be very helpful in this matter.

Donald Lee Cook,

FILED

the 17 day of April
A.D. 1979 at 9:45 A. M.
R. B. Scherer, Jr.
District Clerk
Chambers County, Texas
Signed by the District Clerk

Mr. Andrew P. Cokinos March 28, 1979

I have no information of any mistreatment of any prisoners in the Chambers County jail. I do know the food is good and well prepared. The jail facilities are inadequate because thay were constructed during a period when the facilities were entirely adequate. The jail is kept clean, the prisoners are clean when brought in the Court or before anybody or any judicial body. If Cook failed to shave or bathe himself, it was probably his own fault. For example, I had one man who had psorasis so bad he was almost grotesque, but would not apply the medicine furnished to him at considerable expense to Chambers County in order to alleviate this condition.

Although one of these cases was not in my Court, I will do all I can to see that he has a speedy trial and appoint a lawyer for him if he is indigent, and you may be assured he will continue to receive proper nutrition and treated properly as a prisoner.

I trust this is a sufficient reply to your letter. Copies of the letter will be mailed to the Sheriff of Chambers County, the District Attorney's office, and to the complainant, Donald Lee Cook, alias Frank Cook.

Kindest regards,

Signed by,
Clarence D. Cain

Re: Cause No. 3491

APPENDIX I.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

DONALD LEE COOK	§	U. S. DISTRICT COURT
PLAINTIFF	§	SOUTHERN DISTRICT
	§	OF TEXAS
VS.	§	FILED
	§	OCT 30, 1979
CLARENCE D. CAIN	§	MR. BAILEY THOMAS,
DEFENDANT	§	CLERK

CIVIL ACTION NO. G-79-204

FINAL JUDGMENT

For the reasons stated in this Court's Order of Dismissal entered this date, the above-styled action is hereby dismissed.

this is a final judgment.

Done at Houston, Texas, this 29th day of October, 1979.

Ross N. Sterling
Signed by
U. S. District Judge

APPENDIX J.

THE COUNTY OF CHAMBERS
ANAHUAC, TEXAS 77514
NOVEMBER 8, 1979

Donald Lee Cook
Ellis Unit B-4
Huntsville, Texas 77340

In Re: Cause No. 3491
The State of Texas
vs
Donald Lee Cook

Dear Sir:

Enclosed you will find your Motion to Extend Time for Filing Trial Brief. As we previously notified your Staff Counsel this Motion will need to be filed with the Court of Criminal Appeals.

In compliance with your Motion to Review Transcript we again enclose a copy or our complete transcript to you as we did when notifying you of the completion of the record on October 25, 1979.

If we may be of any further assistance, please feel free to call upon this office

R. B. Scherer, Jr.
District Clerk,
Chambers County, Texas

By Dorothy McCulley
Signed by Deputy

cc:
Carroll E. Wilborn, Jr.
District Attorney
Encl: 2
Certified Mail:
No. 378075

APPENDIX K.

COURT OF CRIMINAL APPEALS
OF TEXAS

CAUSE G-79-203

Filed by the
Southern District
Court
MAY 27, 1980
JESSE E. CLARK,
BY DEPUTY CLERK

NO. 64,757

DONALD LEE COOK § IN THE 75TH JUD. DIST.

VS. § COURT OF CHAMBERS COUNTY

THE STATE OF TX. § TRIAL COURT NO. 3491.

ON THIS 13TH DAY OF MAY, 1980, CAME ON TO BE CONSIDERED THE MOTION OF THE APPELLANT FOR EXTENSION OF TIME WITHIN WHICH TO FILE THE TRANSCRIPTION OF THE COURT REPORTER'S NOTES.

AND SUCH MOTION IS HEREBY DENIED.

IT IS SO ORDERED.

PER CURIAM

A CERTIFIED COPY OF THIS ORDER SHALL BE MAILED TO THE CLERK OF THE TRIAL COURT WHO SHALL FILE IT WITH THE OTHER PAPERS OF THIS CASE AND WHO SHALL INCLUDE IT IN THE APPELLATE RECORD,

A TRUE COPY ATTEST:

THomas Lowe, Clerk
Signed by Thomas Lowe, Clerk
Court of Criminal Appeals

STAMPED BY THE
CLERK, U. S. DISTRICT COURT
RECEIVED _ MAY 27, 1980
SOUTHERN DISTRICT OF TEXAS
HOUSTON TEXAS

In Re: Case No G-79-203
Donald Lee Cook VS. R. B. Bob Scherer, Jr.
Cook can show this Honorable Court, that he has exhausted all state remedies in this matter. Cook has been denied the Constitutional Law for a Right to a Fair Appeal from his conviction of April 17, 1979.

Signed by
Donald Lee Cook

TRIAL COURT NO. 3491

THE STATE OF TEXAS.

TO THE 75TH JUDICIAL DISTRICT COURT OF CHAMBERS COUNTY -GREETING:

Before our COURT OF CRIMINAL APPEALS, on the 16th day of July, A.D. 1980, the cause upon appeal to revise or reverse your judgment between Donald Lee Cook _____Appellant,

NO. 64,757 VS.

THE STATE OF TEXAS,

Was determined; and therein our said COURT OF CRIMINAL APPEALS made its order in these words:

"This cause came on to be heard on the transcript of the record of the Court below, and the same being considered, because it is the opinion of this Court that there was no error in the judgment, it is ordered, adjudged and decreed by the Court that the judgment be in all things affirmed, and that the appellant pay all costs in this behalf expended, and that this decision

be certified below for observance."

WHEREFORE, We command you to observe the order of our said COURT OF CRIMINAL APPEALS in this behalf and in all things have it duly recognized, obeyed and executed.

WITNESS, THE HON. JOHN F. ONION, JR., PRESIDING JUDGE OF OUR SAID COURT OF CRIMINAL APPEALS, WITH THE SEAL THEREOF ANNEXED, AT THE

CITY OF AUSTIN, THIS 1ST DAY OF AUGUST, A.D. 1980

THOMAS LOWE, CLERK

SIGNED BY DEPUTY CLERK SHERRIE ERICSON

NO. 3491-C

EX PARTE	§	IN THE DISTRICT COURT
	§	OF CHAMBERS COUNTY,
	§	TEXAS, 75TH JUDICIAL
	§	DISTRICT, JUNE TERM,
DONALD LEE COOK	§	A. D. 1980

O R D E R

Having considered the petition for writ habeas corpus in the above-captioned cause, along with the State's answer, the Court finds that there are no previously unresolved, controverted facts material to the legality of the Petitioner's confinement in the primary cause, which in this Court, is cause number 3491.

THEREFORE, THE CLERK OF THIS COURT IS ORDERED to certify (1) a copy of the indictment in the primary cause; (2) a copy of the judgment and sentence in the primary cause; (3) a copy of the petition; (4) a copy of the State's answer, and (t) a copy of this order and send them to the Texas Court of Criminal Appeals and to send a copy of this order to the Petitioner (or his attorney if he has one in this case.)

Done on this the 29th day of April, A.D. 1981.

Clarence D. Cain
Signed by Judge Presiding

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DONALD LEE COOK,	§	FILED BY THE DISTRICT
PETITIONER	§	CLERK, JESSE E. Clark
.	§	AUGUST 24, 1981
VS	§	
	§	CIVIL ACTION NO.
W. J. ESTELLE, JR.	§	H-81-232
DIRECTOR, TEXAS	§	
DEPARTMENT OF	§	
CORRECTIONS,	§	
RESPONDENT	§	

FINAL JUDGMENT

For the reasons stated in this Court's Order of Dismissal entered this date, the above-styled action is dismissed without prejudice.

This is a FINAL JUDGMENT.

DONE AT Houston, Texas, this the 24th day of August 1981.

Gabrielle K McDonald
Signed by,
United States District Judge

APPENDIX O.

EX PARTE DONALD LEE COOK - Habeas Corpus Application From
WRIT NO. 9252 CHAMBERS COUNTY

O R D E R

This is a habeas corpus application that was forwarded to this Court by the trial court pursuant to the provisions of Art. 11.07, V.A.C.C.P.

It has come to this Court's attention that the Petitioner has, presently pending in the United States District Court for the Southern District of Texas, Houston Division, an action styled Donald Lee Cook V. W. J. Estelle, Jr., Director of Texas Department of Corrections, Civil Action No. H-81-232, relating to the same issues presented in the instant application for habeas corpus relief.

This Court has repeatedly held that when a Federal Court assumes jurisdiction, this Court will dismiss the application for habeas corpus relief. Ex parte McNeil, 588 S.W. 2d 592 (Tex. Cir. App. 1979); Ex parte Green, 571 S.W. 2d 914 (Tx. Cr. App. 1977); and Ex parte Powers, 487 S.W. 2d 11 (Tx. Cr. App. 1972).

Petitioner's application for habeas corpus relief is therefore dismissed.

IT IS SO ORDERED this 23rd day of September, 1981.

PER CURIAM

EN BANC

STAMPED BY THOMAS LOWE, CLERK
COURT OF CRIMINAL APPEALS
OF TEXAS.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

DONALD LEE COOK, #287787	§	FILED AUG. 19, 1985
	§	BY JESSE E. CLARK,
	§	FOR THE SOUTHERN
VS	§	DISTRICT OF TEXAS
	§	
RAYMOND PROCUNIER	§	C. A. G-82-7

FINAL JUDGMENT

In accordance with this Court's order of even date herewith, respondent's motion to dismiss is GRANTED and petitioner's application for a writ of habeas corpus is denied.

This is a FINAL JUDGMENT.

DONE at Galveston, Texas, this the 19th day of August, 1985.

Hugh Gibson,
Signed by the U. S.
District Judge